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The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GILLIAN ANTOINETTE MIMAGH-KELLEHER,  
PARASKEVAS DUNIAS, JOANNES GREGORIUS BREMER,  
ADRIANUS PETRUS ROMMERS  
and WILHELMUS LAMERTUS VERHOEVEN

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Appeal 2009-011059  
Application 10/537,877  
Technology Center 2800

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Before MAHSHID D. SAADAT, ALLEN R. MacDONALD and  
KEN B. BARRETT, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF CASE

### *Introduction*

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 26-35. Claims 1-25 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

### *Exemplary Claim*

Exemplary independent claim 26 under appeal reads as follows:

Claim 26. An activity monitor comprising:

a measurement unit including a plurality of motion sensors configured to produce sensor signals indicative of motion of the plurality of motion sensors; and

a processor configured to receive the sensor signals from the measurement unit, and to process the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components.

### *Rejections*

1. The Examiner rejected claims 26-35 under 35 U.S.C. § 102(e) as being anticipated by Nikolic (US 6,436,052 B1).

2. The Examiner rejected claims 26-35 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Hutchings (US 6,122,960), Nikolic, and Van Wechel (US 6,452,961 B1).<sup>2</sup>

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<sup>2</sup> Although the final rejection was over the combination of Hutchings and Nikolic, Appellants' Brief and the Examiner's Answer both argue this as a rejection over the combination of Hutchings, Nikolic, and Van Wechel even while still listing it as a rejection over Hutchings and Nikolic. We therefore treat this as a rejection over the combination of Hutchings, Nikolic, and Van Wechel. We view the rejection based on Jacobsen, Nikolic, and Van Wechel similarly.

3. The Examiner rejected claims 26-28, 30-33, and 35 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Jacobsen (US 6,160,478), Nikolic, and Van Wechel.<sup>3</sup>

*Appellants' Contentions*

1. Appellants contend that Nikolic does not teach “producing ‘a magnitude of the vector using a lookup table of stored magnitudes [of vectors] and associated vector components,’ as recited in independent claim 26, and similarly recited in independent claim 31.” (Corrected App. Br. 4) (Emphasis omitted).

2. Appellants contend that Nikolic does not suggest “producing ‘a magnitude of the vector using a lookup table of stored magnitudes [of vectors] and associated vector components,’ as recited in independent claim 26, and similarly recited in independent claim 31.” (Corrected App. Br. 4) (Emphasis omitted).

3. Appellants contend that Van Wechel does not suggest “that the lookup table stores ‘magnitudes and associated vector components,’ as recited in independent claims 26 and 31.” (Corrected App. Br. 7).

*Issues on Appeal*

Did the Examiner err in rejecting claims 26-35 as being anticipated?

Did the Examiner err in rejecting claims 26-35 as being obvious?

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<sup>3</sup> The rejection based on Jacobsen, Nikolic, and Van Wechel is cumulative to the rejection based on Hutchings, Nikolic, and Van Wechel. Therefor, we vacate the rejection based on Jacobsen, Nikolic, and Van Wechel.

## ANALYSIS

### *35 U.S.C. § 102(e)*

We have reviewed the Examiners' rejection in light of Appellants' contentions that the Examiner has erred. We agree with Appellants' above contention 1. Nikolic does not "teach" the claim lookup table limitation in the manner required by 35 U.S.C. § 102(e).

### *35 U.S.C. § 103(a)*

We have reviewed the Examiners' rejection in light of Appellants' contentions that the Examiner has erred. We disagree with Appellants' above contentions 2 and 3. Nikolic and Van Wechel do "suggest" the claim lookup table limitation in the manner required by 35 U.S.C. § 103(a). Particularly, as pointed out by the Examiner:

Van Wechel's teaching, "methods for computing or approximating the magnitude of a vector include the use of lookup table", inherently teaches a lookup table of stored magnitudes and associated vector components. The computation/approximation of the magnitude of a vector using a lookup table clearly requires the lookup table to include magnitudes and associated vector components because if the lookup table did not include the magnitude and its associated vector components, then an additional processor would be required to compute/calculate the magnitude of the vectors and this would render the lookup table useless for the intended purpose.

(Second Ans. 13).

Additionally, we note the conventional nature of the substitution of a lookup table for computation and vice versa. See for example, Baran (US 4,438,511) at column 13, line 64, through column 14, line 12.

### CONCLUSIONS

- (1) Appellants have shown that the Examiner erred in rejecting claims 26-35 as being anticipated under 35 U.S.C. § 102(e).
- (2) The Examiner has not erred in rejecting 26-35 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Hutchings, Nikolic, and Van Wechel.
- (3) Claims 26-35 are not patentable.

### DECISION

The Examiner's rejection of claims 26-35 under 35 U.S.C. § 102(e) is reversed.

The Examiner's rejection of claims 26-35 under 35 U.S.C. § 103(a) based on Hutchings, Nikolic, and Van Wechel is affirmed.

The Examiner's rejection under 35 U.S.C. § 103(a) based on Jacobsen, Nikolic, and Van Wechel is vacated.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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